

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. 15-415

LEAFORD GEORGE CAMERON :

GOVERNMENT'S PROPOSED JURY INSTRUCTIONS

The United States of America, by and through its attorneys, Louis D. Lappen, United States Attorney for the Eastern District of Pennsylvania, and James A. Petkun, Assistant United States Attorney for the District, respectfully submits the following proposed jury instructions¹ pursuant to Federal Rule of Criminal Procedure 30 and requests leave to file any supplemental instructions as may appear necessary and proper.

Respectfully submitted,

LOUIS D. LAPPEN
United States Attorney

/s/ James A. Petkun
JAMES A. PETKUN
Assistant United States Attorney

Date: January 19, 2018

¹ The government has noted deletions from model instructions by ~~strikeout~~ and additions by underlining.

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GOV'T'S REQUEST NO. 1

Role of Jury

Members of the jury, you have seen and heard all the evidence and the arguments of the lawyers. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence that you have heard and seen in court during this trial. That is your job and yours alone. I play no part in finding the facts. You should not take anything I may have said or done during the trial as indicating what I think of the evidence or what I think about what your verdict should be.

Your second duty is to apply the law that I give you to the facts. My role now is to explain to you the legal principles that must guide you in your decisions. You must apply my instructions carefully. Each of the instructions is important, and you must apply all of them. You must not substitute or follow your own notion or opinion about what the law is or ought to be. You must apply the law that I give to you, whether you agree with it or not.

Whatever your verdict, it will have to be unanimous. All of you will have to agree on it or there will be no verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up his or her own mind. This is a responsibility that each of you has and that you cannot avoid.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or social media website such as Facebook, Instagram, Snapchat, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone,

correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by any person's race, color, religion, national ancestry, or gender, sexual orientation, profession, occupation, celebrity, economic circumstances, or position in life or in the community.

3rd Circuit Model Criminal Jury Instructions, No. 3.01 (2015) (modified as noted).

GOV'T'S REQUEST NO. 2

Jury Recollection Controls

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection, which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

1A O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, § 12.07 (6th ed. 2010) (unmodified); United States v. Thames, 846 F.2d 200, 204 (3d Cir.), cert. denied, 488 U.S. 928 (1988).

GOV'T'S REQUEST NO. 3

Penalty Not To Be Considered

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the offenses charged.

1A O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, § 20.01 (6th ed. 2010) (the instruction set out is paragraph 6 of a longer instruction intended to be given as the jury retires); United States v. Austin, 533 F.2d 879, 884-85 (3d Cir. 1976), cert. denied, 429 U.S. 1043 (1977).

GOV'T'S REQUEST NO. 4

Evidence

You must make your decision in this case based only on the evidence that you saw and heard in the courtroom. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence from which you are to find the facts consists of the following:

- (1) The testimony of the witnesses;
- (2) Documents and other things received as exhibits; and
- (3) Any fact or testimony that was stipulated; that is, formally agreed to by the parties.

((4) Any facts that have been judicially noticed--that is, facts which I say you may accept as true even without other evidence.)

The following are not evidence:

- (1) The indictment;
- (2) Statements and arguments of the lawyers for the parties in this case;
- (3) Questions by the lawyers and questions that I might have asked;
- (4) Objections by lawyers, including objections in which the lawyers stated facts;
- (5) Any testimony I struck or told you to disregard; and
- (6) Anything you may have seen or heard about this case outside the courtroom.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience and common sense tells you that certain evidence reasonably leads to a conclusion, you may reach that conclusion.

As I told you in my preliminary instructions, the rules of evidence control what can be received into evidence. During the trial the lawyers objected when they thought that evidence was offered that was not permitted by the rules of evidence. These objections simply meant that the lawyers were asking me to decide whether the evidence should be allowed under the rules.

You should not be influenced by the fact that an objection was made. You should also not be influenced by my rulings on objections or any sidebar conferences you may have overheard. When I overruled an objection, the question was answered or the exhibit was received as evidence, and you should treat that testimony or exhibit like any other. When I allowed evidence (testimony or exhibits) for a limited purpose only, I instructed you to consider that evidence only for that limited purpose and you must do that.

When I sustained an objection, the question was not answered or the exhibit was not received as evidence. You must disregard the question or the exhibit entirely. Do not think about or guess what the witness might have said in answer to the question; do not think about or guess what the exhibit might have shown. Sometimes a witness may have already answered before a lawyer objected or before I ruled on the objection. If that happened and if I sustained the objection, you must disregard the answer that was given.

Also, if I ordered that some testimony or other evidence be stricken or removed from the record, you must disregard that evidence. When you are deciding this case, you must not consider or be influenced in any way by the testimony or other evidence that I told you to disregard.

Although the lawyers may have called your attention to certain facts or factual conclusions that they thought were important, what the lawyers said is not evidence and is not binding on you. It is your own recollection and interpretation of the evidence that controls your decision in this case. Also, do not assume from anything I may have done or said during the trial that I have any opinion about any of the issues in this case or about what your verdict should be.

3rd Circuit Model Criminal Jury Instructions, No. 3.02 (2015) (unmodified).

GOV'T'S REQUEST NO. 5

Direct and Circumstantial Evidence

Two types of evidence may be used in this trial, "direct evidence" and "circumstantial (or indirect) evidence." You may use both types of evidence in reaching your verdict.

"Direct evidence" is simply evidence which, if believed, directly proves a fact. An example of "direct evidence" occurs when a witness testifies about something the witness knows from his or her own senses — something the witness has seen, touched, heard, or smelled.

"Circumstantial evidence" is evidence which, if believed, indirectly proves a fact. It is evidence that proves one or more facts from which you could reasonably find or infer the existence of some other fact or facts. A reasonable inference is simply a deduction or conclusion that reason, experience, and common sense lead you to make from the evidence. A reasonable inference is not a suspicion or a guess. It is a reasoned, logical decision to find that a disputed fact exists on the basis of another fact.

For example, if someone walked into the courtroom wearing a wet raincoat and carrying a wet umbrella, that would be circumstantial or indirect evidence from which you could reasonably find or conclude that it was raining. You would not have to find that it was raining, but you could.

Sometimes different inferences may be drawn from the same set of facts. The government may ask you to draw one inference, and the defense may ask you to draw another. You, and you alone, must decide what reasonable inferences you will draw based on all the evidence and your reason, experience and common sense.

You should consider all the evidence that is presented in this trial, direct and circumstantial. The law makes no distinction between the weight that you should give to either direct or circumstantial evidence. It is for you to decide how much weight to give any evidence.

3rd Circuit Model Criminal Jury Instructions, No. 3.03 (2015) (unmodified).

GOV'T'S REQUEST NO. 6

Credibility of Witnesses

As I stated in my preliminary instructions at the beginning of the trial, in deciding what the facts are you must decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. Credibility refers to whether a witness is worthy of belief: Was the witness truthful? Was the witness' testimony accurate? You may believe everything a witness says, or only part of it, or none of it.

You may decide whether to believe a witness based on his or her behavior and manner of testifying, the explanations the witness gave, and all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. In deciding the question of credibility, remember to use your common sense, your good judgment, and your experience.

In deciding what to believe, you may consider a number of factors:

- (1) The opportunity and ability of the witness to see or hear or know the things about which the witness testified;
- (2) The quality of the witness' knowledge, understanding, and memory;
- (3) The witness' appearance, behavior, and manner while testifying;
- (4) Whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice;
- (5) Any relation the witness may have with a party in the case and any effect the verdict may have on the witness;
- (6) Whether the witness said or wrote anything before trial that was different from the witness' testimony in court;

(7) Whether the witness' testimony was consistent or inconsistent with other evidence that you believe [*alternative: how believable the witness' testimony was when considered with other evidence that you believe*]; and

(8) Any other factors that bear on whether the witness should be believed.

Inconsistencies or discrepancies in a witness' testimony or between the testimony of different witnesses may or may not cause you to disbelieve a witness' testimony. Two or more persons witnessing an event may simply see or hear it differently. Mistaken recollection, like failure to recall, is a common human experience. In weighing the effect of an inconsistency, you should also consider whether it was about a matter of importance or an insignificant detail. You should also consider whether the inconsistency was innocent or intentional.

You are not required to accept testimony even if the testimony was not contradicted and the witness was not impeached. You may decide that the witness is not worthy of belief because of the witness' bearing and demeanor, or because of the inherent improbability of the testimony, or for other reasons that are sufficient to you.

After you make your own judgment about the believability of a witness, you can then attach to that witness' testimony the importance or weight that you think it deserves.

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testified or the quantity of evidence that was presented. What is more important than numbers or quantity is how believable the witnesses were, and how much weight you think their testimony deserves.

3rd Circuit Model Criminal Jury Instructions, No. 3.04 (2015) (unmodified).

GOV'T'S REQUEST NO. 7

Not All Evidence, Not All Witnesses Needed

Although the government is required to prove the defendant guilty beyond a reasonable doubt, the government is not required to present all possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case. In addition, as I have explained, the defendant is not required to present any evidence or produce any witnesses.

[In this case, defendant [name] [presented evidence] [produced witnesses].

Defendant [name] is not required to present all possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case.]

3rd Circuit Model Criminal Jury Instructions, No. 3.05 (2015) (unmodified).

GOV'T'S REQUEST NO. 8

Presumption of Innocence; Burden of Proof; Reasonable Doubt

The defendant, Leaford George Cameron, pleaded not guilty to the offenses charged. Every defendant is presumed to be innocent. He started the trial with a clean slate, with no evidence against him. The presumption of innocence stays with a defendant unless and until the government has presented evidence that overcomes that presumption by convincing you that the defendant is guilty of the offense charged beyond a reasonable doubt. The presumption of innocence requires that you find a defendant not guilty, unless you are satisfied that the government has proved guilt beyond a reasonable doubt.

The presumption of innocence means that a defendant has no burden or obligation to present any evidence at all or to prove that he is not guilty. The burden or obligation of proof is on the government to prove that a defendant is guilty and this burden stays with the government throughout the trial.

In order for you to find a defendant guilty of the offense charged, the government must convince you that that defendant is guilty beyond a reasonable doubt. That means that the government must prove each and every element of the offense charged beyond a reasonable doubt. A defendant may not be convicted based on suspicion or conjecture, but only on evidence proving guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt or to a mathematical certainty. Possible doubts or doubts based on conjecture, speculation, or hunch are not reasonable doubts. A reasonable doubt is a fair doubt based on reason, logic, common sense, or experience. It is a doubt that an ordinary reasonable person has after carefully weighing all of the evidence, and is a doubt of the sort that would cause him or her to hesitate to act in

matters of importance in his or her own life. It may arise from the evidence, or from the lack of evidence, or from the nature of the evidence.

If, having now heard all the evidence, you are convinced that the government proved each and every element of the offense charged beyond a reasonable doubt, you should return a verdict of guilty for that offense. However, if you have a reasonable doubt about one or more of the elements of the offense charged, then you must return a verdict of not guilty of that offense.

3rd Circuit Model Criminal Jury Instructions, No. 3.06 (2015) (modified as noted).

GOV'T'S REQUEST NO. 9

Venue

The indictment alleges that some act in furtherance of the offense charged occurred here in the Eastern District of Pennsylvania. There is no requirement that all aspects of the offense charged take place here in the Eastern District of Pennsylvania. But for you to return a guilty verdict, the government must convince you that some act in furtherance of the crime charged took place in the Eastern District of Pennsylvania.

Unlike all the elements that I have described, this fact only has to be proved by a preponderance of the evidence. This means the government only has to convince you that it is more likely than not that some act in furtherance of the crime charged took place here.

Remember that the government must prove all the elements I have described beyond a reasonable doubt.

3rd Circuit Model Criminal Jury Instructions, No. 3.09 (2015) (unmodified).

GOV'T'S REQUEST NO. 10

Summary Nature of the Indictment

As you know, defendant Leaford George Cameron is charged in the indictment with violating federal law. Specifically, Count 1 charges defendant Cameron with mail fraud. Counts 2 and 3 each charge defendant Cameron with wire fraud. Counts 4 through 6 each charge defendant Cameron with making false statements. As I explained at the beginning of trial, an indictment is just the formal way of specifying the exact crimes a defendant is accused of committing. An indictment is simply a description of the charges against a defendant. It is an accusation only. An indictment is not evidence of anything, and you should not give any weight to the fact that a defendant has been indicted in making your decision in this case.

3rd Circuit Model Criminal Jury Instructions, No. 3.07 (2015) (modified as noted).

GOV'T'S REQUEST NO. 11

"On or About"

You will note that the indictment charges that the offenses were committed "on or about" certain dates. The Government does not have to prove with certainty the exact dates of the alleged offenses. It is sufficient if the Government proves beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged.

3rd Circuit Model Criminal Jury Instructions, No. 3.08 (2015) (unmodified).

GOV'T'S REQUEST NO. 12

Separate Consideration - Single Defendant Charged with Multiple Offenses

The defendant, Leaford George Cameron, is charged with more than one offense; each offense is charged in a separate count of the indictment.

The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. You must separately consider the evidence that relates to each offense, and you must return a separate verdict for each offense. For each offense charged, you must decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of that particular offense.

Your decision on one offense, whether guilty or not guilty, should not influence your decision on any of the other offenses charged. Each offense should be considered separately.

3rd Circuit Model Criminal Jury Instructions, No. 3.12 (2015) (unmodified).

GOV'T'S REQUEST NO. 13

Verdict as to defendant only

You are here to determine whether the government has proven the guilt of the defendant for the charges in the indictment beyond a reasonable doubt. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of a defendant for the crimes charged in the indictment, you should so find, even though you may believe that one or more other unindicted persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find that defendant not guilty.

1A O'Malley, Grenig, and Lee, Federal Jury Practice and Instructions, §12.11 (6th ed. 2010) (unmodified).

GOV'T'S REQUEST NO. 14

Stipulated Testimony; Stipulation of Fact; Judicial Notice (F.R.E. 201)

The parties have agreed what (*name of witness*)'s testimony would be if called as a witness. You should consider that testimony in the same way as if it had been given here in court by the witness.

The Government and the defendant(s) have agreed that (*set forth stipulated fact(s)*) (*is*)*(are)* true. You should therefore treat (*this fact*)*(these facts)* as having been proved. You are not required to do so, however, since you are the sole judge of the facts.

I have taken judicial notice of certain facts. (*State the fact(s) that are being judicially noticed.*) I believe (*this fact is*) (*these facts are*) (*of such common knowledge*) (*can be so accurately and readily determined from (name accurate source)*) that it cannot reasonably be disputed. You may accept this fact as proven, but are not required to do so. As with any fact the final decision whether or not to accept it is for you to make and you are not required to agree with me.

3rd Circuit Model Criminal Jury Instructions, Nos. 4.01-4.03 (2015) (unmodified).

GOV'T'S REQUEST NO. 15

Audio/Video Recordings - Consensual

During the trial, you heard audio recordings of conversations with the defendant(s) made without his knowledge. These recordings were made with the consent and agreement of (name), one of the other parties to the conversations. Immigration Court proceedings that occurred and were recorded in open court, on-the-record, and before immigration judges in various legal matters.

The use of this procedure to gather evidence is lawful and the recordings may be used by either party.

3rd Circuit Model Criminal Jury Instructions, Nos. 4.04 (2015) (modified as noted).

GOV'T'S REQUEST NO. 16

Audio/Video Recordings - Transcripts

You have heard audio recordings that were received in evidence, and you were given written transcripts of the recordings.

Keep in mind that the transcripts are not evidence. They were given to you only as a guide to help you follow what was being said. The recordings themselves are the evidence. If you noticed any differences between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the recordings you must ignore the transcripts as far as those parts are concerned.

[The transcripts name the speakers. But remember, you must decide who you actually heard speaking in the recording. The names on the transcript were used simply for your convenience.]

3rd Circuit Model Criminal Jury Instructions, No. 4.06 (2015) (unmodified).

GOV'T'S REQUEST NO. 17

Specific Investigation Techniques Not Required

During the trial, you heard testimony of witnesses and argument by counsel that the government did not use specific investigative techniques such as DNA analysis, blood analysis, crime scene forensic analysis, or fingerprinting analysis. You may consider these facts in deciding whether the government has met its burden of proof, because as I told you, you should look to all of the evidence or lack of evidence in deciding whether the defendant is guilty. However, there is no legal requirement that the government use any of these specific investigative techniques or all possible techniques to prove its case. There is no requirement to attempt to gather DNA analysis, blood analysis, crime scene forensic analysis, or fingerprinting analysis, or to offer any of these items into evidence.

Your concern, as I have said, is to determine whether or not the evidence admitted in this trial proves the defendant's guilt beyond a reasonable doubt.

3rd Circuit Model Criminal Jury Instructions, No. 4.14 (2015) (modified as noted).

GOV'T'S REQUEST NO. 18

Credibility of Witnesses – Law Enforcement Officer

You have heard the testimony of law enforcement officers. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness.

[At the same time, it is quite legitimate for defense counsel to try to attack the believability of a law enforcement witness on the ground that (his)(her) testimony may be colored by a personal or professional interest in the outcome of the case.]

You must decide, after reviewing all the evidence, whether you believe the testimony of the law enforcement witness and how much weight, if any, it deserves.

3rd Circuit Model Criminal Jury Instructions, No. 4.18 (2015) (unmodified).

GOV'T'S REQUEST NO. 19

Defendant's Choice not to Testify or Present Evidence

Defendant [name] did not testify (*did not present evidence*) in this case. A defendant has an absolute constitutional right not to testify (*or to present any evidence*). The burden of proof remains with the prosecution throughout the entire trial and never shifts to a defendant. A defendant is never required to prove that he is innocent. You must not attach any significance to the fact that a defendant did not testify. You must not draw any adverse inference against a defendant because he/she did not take the witness stand. Do not consider, for any reason at all, the fact that a defendant did not testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.

3rd Circuit Model Criminal Jury Instructions, No. 4.27 (2015) (unmodified).

GOV'T'S REQUEST NO. 20

Defendant's Testimony

In a criminal case, a defendant has a constitutional right not to testify. However, if he/she chooses to testify, he/she is, of course, permitted to take the witness stand on his/her own behalf. In this case, defendant *[name]* testified. You should examine and evaluate his/her testimony just as you would the testimony of any witness.

3rd Circuit Model Criminal Jury Instructions, No. 4.28 (2015) (unmodified).

GOV'T'S REQUEST NO. 21

Defendant's Character Evidence

You have heard (*reputation*)(*opinion*)(*reputation and opinion*) evidence about whether the defendant has a character trait for (*name trait, such as truthfulness, peacefulness, honesty, being a law-abiding citizen, etc.*).

You should consider this character evidence together with and in the same way as all the other evidence in the case in deciding whether the government has proved the charge(s) beyond a reasonable doubt.

3rd Circuit Model Criminal Jury Instructions, No. 4.39 (2015) (unmodified).

GOV'T'S REQUEST NO. 22

Motive Explained

Motive is not an element of the offenses with which the defendant is charged. Proof of bad motive is not required to convict. Further, proof of bad motive alone does not establish that a defendant is guilty and proof of good motive alone does not establish that a defendant is not guilty. Evidence of a defendant's motive may, however, help you find a defendant's intent.

Intent and motive are different concepts. Motive is what prompts a person to act. Intent refers only to the state of mind with which the particular act is done.

Personal advancement and financial gain, for example, are motives for much of human conduct. However, these motives may prompt one person to intentionally do something perfectly acceptable while prompting another person to intentionally do an act that is a crime.

3rd Circuit Model Criminal Jury Instructions, No. 5.04 (2015) (unmodified).

GOV'T'S REQUEST NO. 23

Count One – Mail Fraud – Essential Elements

Count One of the indictment charges Leaford George Cameron with mail fraud, which is a violation of federal law.

In order to find a defendant guilty of this offense, you must find that the government proved each of the following three elements beyond a reasonable doubt:

First: That the defendant knowingly devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises, or willfully participated in such a scheme with knowledge of its fraudulent nature;

Second: That the defendant acted with the intent to defraud; and

Third: That in advancing, furthering, or carrying out the scheme, the defendant used the mails or a private or commercial interstate carrier, or caused the mails or a private or commercial interstate carrier to be used.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1341 (2016) (modified as noted).

GOV'T'S REQUEST NO. 24

Counts Two and Three – Wire Fraud - Essential Elements

Counts Two and Three of the indictment each charge Leaford George Cameron with wire fraud, which is a violation of federal law.

In order to find a defendant guilty of this offense, you must find that the government proved each of the following three elements beyond a reasonable doubt:

First: That the defendant knowingly devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises, or willfully participated in such a scheme with knowledge of its fraudulent nature;

Second: That the defendant acted with the intent to defraud; and

Third: That in advancing, furthering, or carrying out the scheme, the defendant transmitted any writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce or caused the transmission of any writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

The offenses of mail fraud and wire fraud have some elements in common. I will instruct you on these common elements first.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1343 (2016) (modified as noted).

GOV'T'S REQUEST NO. 25

Counts One, Two, and Three – Mail and Wire Fraud - “Knowingly” - Defined

The offenses of mail and wire fraud charged in the indictment require that the government prove that the defendant acted "knowingly" with respect to certain elements of the offenses. This means that the government must prove beyond a reasonable doubt that that defendant was conscious and aware of the nature of his actions and of the surrounding facts and circumstances, as specified in the definition of the offense charged.

In deciding whether the defendant acted "knowingly", you may consider evidence about what he said, what he did and failed to do, how he acted, and all the other facts and circumstances shown by the evidence that may prove what was in his mind at that time.

The government is not required to prove that the defendant knew his acts were against the law.

3rd Circuit Model Criminal Jury Instructions, No. 5.02 (2015) (unmodified).

GOV'T'S REQUEST NO. 26

Counts One, Two, and Three – Mail and Wire Fraud – “Scheme to Defraud or to Obtain Money or Property” - Defined

The first element that the government must prove beyond a reasonable doubt for both mail fraud and wire fraud is that the defendant knowingly devised or willfully participated in a scheme to defraud the victims named in the indictment, of money or property by materially false or fraudulent pretenses, representations or promises.

A "scheme" is merely a plan for accomplishing an object.

"Fraud" is a general term that embraces all the various means by which one person can gain an advantage over another by false representations, suppression of the truth, or deliberate disregard for the truth.

Thus, a "scheme to defraud" is any plan, device, or course of action to deprive another of money or property by means of false or fraudulent pretenses, representations or promises reasonably calculated to deceive persons of average prudence.

In this case, the indictment alleges that the scheme to defraud was carried out by making false or fraudulent statements, representations, claims, or documents. The representations which the government charges were made as part of the scheme to defraud are set forth in the indictment (~~which I have already read to you~~). The government is not required to prove every misrepresentation charged in the indictment. It is sufficient if the government proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme to defraud. However, you cannot convict the defendant unless all of you agree as to at least one of the material misrepresentations.

A statement, representation, claim or document is false if it is untrue when made and if the person making the statement, representation, claim or document or causing it to be made knew it was untrue at the time it was made.

A representation or statement is fraudulent if it was falsely made with the intention to deceive.

In addition, deceitful statements of half-truths or the concealment of material facts or the expression of an opinion not honestly entertained may constitute false or fraudulent statements. The arrangement of the words, or the circumstances in which they are used, may convey the false and deceptive appearance.

The deception need not be premised upon spoken or written words alone. If there is deception, the manner in which it is accomplished is immaterial.

[(The failure to disclose information may constitute a fraudulent representation if the defendant was under a legal, professional or contractual duty to make such a disclosure, the defendant actually knew such disclosure ought to be made, and the defendant failed to make such disclosure with the intent to defraud.])

The false or fraudulent representation must relate to a material fact or matter. A material fact is one that would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision as to whom to retain as legal counsel.

This means that if you find that a particular statement of fact was false, you must determine whether that statement was one that a reasonable person might have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions of material facts.

In order to establish a scheme to defraud, the government must also prove that the alleged scheme contemplated depriving another of money or property.

However, the government is not required to prove that the defendant himself originated the scheme to defraud. Furthermore, it is not necessary that the government prove that the defendant actually realized any gain from the scheme or that any intended victim actually suffered any loss. In this case, it so happens that the government does contend that the proof establishes that the victims named in the indictment were defrauded and that the defendant profited. Although whether or not the scheme actually succeeded is really not the question, you may consider whether it succeeded in determining whether the scheme existed.

If you find that the government has proved beyond a reasonable doubt that the overall scheme to defraud charged in the indictment did exist and that the defendant knowingly devised or participated in the overall scheme charged in the indictment, you should then consider the second element.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1341-1 (2016) (modified as noted).

GOV'T'S REQUEST NO. 27

Counts One, Two, and Three – Mail and Wire Fraud – Intent to Defraud - Defined

The second element that the government must prove beyond a reasonable doubt for both mail fraud and wire fraud is that the defendant acted with the specific intent to defraud.

To act with an "intent to defraud" means to act knowingly and with the intention or the purpose to deceive or to cheat.

In considering whether the defendant acted with an intent to defraud, you may consider, among other things, whether he acted with a desire or purpose to bring about some gain or benefit to himself or someone else or with a desire or purpose to cause some loss to someone.

That concludes my instructions on the common elements of mail fraud and wire fraud. I will now instruct you on the different elements of each.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1341-4 (2016) (unmodified).

GOV'T'S REQUEST NO. 28

Count One – Mail Fraud – “Use of Mails” - Defined

The third element that the government must prove beyond a reasonable doubt to prove a mail fraud violation is that in advancing, furthering, or carrying out the scheme, the defendant used the mails, or caused the mails to be used.

The government is not required to prove that the defendant himself actually mailed anything or that he even intended that the mails would be used to further, or to advance, or to carry out the scheme.

However, the government must prove beyond a reasonable doubt, that the mails were, in fact, used in some manner to further, or to advance, or to carry out the scheme to defraud. The government must also prove either that the defendant used the mails, or that he knew the use of the mails would follow in the ordinary course of business or events, or that he should reasonably have anticipated that the mails would be used.

It is not necessary that the item mailed was itself false or fraudulent or contained any false or fraudulent statement, representation, or promise, or contained any request for money or thing of value.

However, the government must prove beyond a reasonable doubt that the use of the mails in some way furthered, or advanced, or carried out the scheme.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1341-5 (2016) (modified as noted).

GOV'T'S REQUEST NO. 29

Count One – Mail Fraud - Each Use of the Mails a Separate Offense

Each use of the mails to advance, or to further, or to carry out the scheme or plan may be a separate violation of the mail fraud statute.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1341-6 (2016) (unmodified).

GOV'T'S REQUEST NO. 30

Counts Two and Three - Wire Fraud - "Transmits by means of wire, radio, or television communication in interstate commerce" - Defined

The third element that the government must prove beyond a reasonable doubt to prove a wire fraud violation is that in advancing, furthering, or carrying out the scheme, the defendant transmitted a writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce or caused the transmission of a writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

The phrase "transmits by means of wire, radio, or television communication in interstate commerce" means to send from one state to another by means of telephone or telegraph lines or by means of radio or television. The phrase includes a telephone conversation by a person in one state with a person in another state, or electronic signals sent from one state to another, such as by fax or financial wire. The use of the Internet to send a message, such as an e-mail, or to communicate with a web site may constitute a wire transmission in interstate commerce.

The government is not required to prove that the defendant actually used a wire communication in interstate commerce or that he even intended that anything be transmitted in interstate commerce by means of a wire, radio, or television communication to further, or to advance, or to carry out the scheme or plan to defraud and to obtain for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.

However, the government must prove beyond a reasonable doubt that a transmission by a wire, radio, or television communication facility in interstate commerce was, in fact, used in some manner to further, or to advance, or to carry out the scheme to defraud. The government must also prove either that the defendant used wire, radio, or television communication in interstate commerce, or that he knew the use of the wire, radio, or television communication in interstate commerce would follow in the ordinary course of business or

events, or that he should reasonably have anticipated that wire, radio, or television communication in interstate commerce would be used.

It is not necessary that the information transmitted by means of wire, radio, or television communication in interstate commerce itself was false or fraudulent or contained any false or fraudulent pretense, representation, or promise, or contained any request for money or thing of value.

However, the government must prove beyond a reasonable doubt that the use of the wire, radio, or television communication in interstate commerce furthered, or advanced, or carried out, in some way, the scheme.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1343-1 (2016) (modified as noted).

GOV'T'S REQUEST NO. 31

Counts Two and Three – Wire Fraud - Each Transmission by Wire Communication a Separate Offense

Each transmission by wire communication in interstate commerce to advance, or to further, or to carry out the scheme or plan may be a separate violation of the wire fraud statute.

3rd Circuit Model Criminal Jury Instructions, No. 6.18.1343-2 (2016) (unmodified).

GOV'T'S REQUEST NO. 32**Counts Four, Five, and Six – False Statements - Indictment in the conjunctive, statute and required proof in the disjunctive**

Before I discuss elements of the offenses charged in the indictment, I want to instruct you in the meaning of the word "and" when it is used in statutes or indictments.

It is not uncommon that a given criminal statute will prohibit not merely one form of action but several related forms of action in what lawyers call "the disjunctive," that is, separated by the word "or." For example, 18 U.S.C. § 1001(a), makes it illegal to knowingly and willfully falsify, conceal or cover up a material fact, by trick, scheme or device, *or* make a materially false, fictitious or fraudulent statement or representation, *or* use a false writing or document, knowing the same to contain a materially false, fictitious or fraudulent statement or entry. This statute prohibits three different actions. All three of these actions are separated by the word "or" in the statute. Yet, when you look at the indictment, it is permissible for the government to charge all three and separate them with the word "and." This, however, does not mean that if the government does so, it must prove that the defendant violated the statute in all three ways. If only one of those alternatives is proved beyond a reasonable doubt, that is sufficient for conviction. As the United States Supreme Court has said: "The general rule is that when a jury returns a guilty verdict on an indictment charging several acts in the conjunctive, . . . the verdict stands if the evidence is sufficient with respect to any one of the acts charged." Thus, for example, if the evidence proves that a defendant concealed a material fact, it is irrelevant whether or not he made a false statement.

Turner v. United States, 396 U.S. 398, 420-21 (1970); United States v. Niederberger, 580 F.2d 63, 67-68 (3d Cir. 1978).

GOV'T'S REQUEST NO. 33

Counts Four, Five, and Six – False Statements – Indictment and Statute

The government has charged the defendant with three counts of making false statements in violation of 18 U.S.C. § 1001:

Count Four charges that on or about April 11, 2011 the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly made materially false, fictitious, and fraudulent statements and representations.

Count Five charges that on or about August 23, 2011 the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly made materially false, fictitious, and fraudulent statements and representations; and

Count Six charges that on or about March 28, 2013 defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly made materially false, fictitious, and fraudulent statements and representations.

The relevant statute on this subject is section 1001(a) of Title 18 of the United States Code, which covers three types of illegal activity, as follows:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry shall be [guilty of a crime].

You will observe that the indictment charges the defendant with violating the statute in all three ways. I will now explain the separate, basic elements for the three ways the government contends the defendant violated Section 1001.

18 U.S.C. § 1001(a).

GOV'T'S REQUEST NO. 34

Counts Four, Five, and Six – False Statements – Making False Statements - Essential Elements of the Offense

The government has charged the defendant with making false, fictitious or fraudulent statements. In order to prove the defendant guilty of the crimes charged, the government must establish beyond a reasonable doubt that:

First, on or about the date specified, the defendant made a statement or representation;

Second, that this statement or representation was material;

Third, the statement or representation was false, fictitious, or fraudulent;

Fourth, the false, fictitious, or fraudulent statement was made knowingly and willfully; and

Fifth, the statement or representation was made in a matter within the jurisdiction of the government of the United States.

I will next explain these elements to you in more detail.

2 L. Sand, et al, Modern Federal Jury Instructions - Criminal, No. 36-9 (2015) (modified as noted).

GOV'T'S REQUEST NO. 35**Counts Four, Five, and Six – False Statements - Making False Statements – Definitions of Elements**

The first element that the government must prove beyond a reasonable doubt is that the defendant made a statement or representation. In this regard, the government need not prove that the defendant physically made or otherwise personally prepared the statement in question. It is sufficient if defendant caused the statement charged in the indictment to have been made. Under this statute, there is no distinction between written and oral statements.²

The second element the government must prove beyond a reasonable doubt is that the defendant's statement or representation was material. A fact is material if it was capable of influencing the government's decisions or activities. However, proof of actual reliance on the statement by the government is not required.³

The third element that the government must prove beyond a reasonable doubt is that the statement or representation was false, fictitious, or fraudulent. A statement or representation is "false" or "fictitious" if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made. A statement or representation is "fraudulent" if it was untrue when made and was made or caused to be made with the intent to deceive the government agency to which it was submitted. *If applicable: If [the government's question] was ambiguous, so that it reasonably could be interpreted in several ways, then the government must prove that defendant's answer was false under any reasonable interpretation of the question.)⁴*

² 2 L. Sand, et al, Modern Federal Jury Instructions - Criminal, No. 36-10 (2015) (unmodified).

³ 2 L. Sand, et al, Modern Federal Jury Instructions - Criminal, No. 36-11 (2015) (unmodified).

⁴ 2 L. Sand, et al, Modern Federal Jury Instructions - Criminal, No. 36-12 (2015) (modified as noted).

The fourth element which the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully. An act is done knowingly if it is done purposely and voluntarily, as opposed to mistakenly or accidentally. An act is done willfully if it is done with an intention to do something the law forbids, that is, with a bad purpose to disobey the law.⁵

As I have told you, the fifth element that the government must prove beyond a reasonable doubt with respect to each count is that the statement or representation be made with regard to a matter within the jurisdiction of the government of the United States. I charge you that the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services and the U.S. Department of Justice, Executive Office for Immigration Review are agencies department of the United States government. There is no requirement that the statement or representation be actually directed to or given to those agencies. All that is necessary is that you find that it was contemplated that the statement or representation was to be utilized in a matter that was within the jurisdiction of the government of the United States. To be within the jurisdiction of a department or agency of the United States government means that the statement or representation must concern an authorized function of that department or agency. In this regard, it is not necessary for the government to prove that the defendant had actual knowledge that the false statement or representation was to be utilized in a matter that was within the jurisdiction of the government of the United States. It is sufficient to satisfy this element if you find that the false statement or representation was made with regard to a matter within the jurisdiction of the government of the United States.⁶

⁵ 2 L. Sand, et al, Modern Federal Jury Instructions - Criminal, No. 36-13 (2015) (unmodified).

⁶ 2 L. Sand, et al, Modern Federal Jury Instructions - Criminal, No. 36-14 (2015) (modified as noted).

GOV'T'S REQUEST NO. 36

Summaries - Underlying Evidence Admitted

The government presented certain charts and summaries in order to help explain the facts disclosed by the (*describe the admitted evidence that provided the basis for the summaries; e.g., books, records, documents*) which were admitted as evidence in the case. The charts and summaries are not themselves evidence or proof of any facts. If the charts and summaries do not correctly reflect the evidence in the case, you should disregard them and determine the facts from the underlying evidence.

3rd Circuit Model Criminal Jury Instructions, No. 4.10 (2015) (unmodified).

GOV'T'S REQUEST NO. 37

Summaries – Underlying Evidence Not Admitted (F.R.E. 1006)

Certain (*charts*)(*summaries*) offered by the government were admitted as evidence. You may use those (*charts*)(*summaries*) as evidence, even though the underlying documents and records have not been admitted into evidence.

*[(However, the (accuracy)(authenticity) of those (*charts*)(*summaries*) has been challenged. You must decide how much weight, if any, you will give to them. In making that decision, you should consider the testimony you heard about the way in which the (*charts*)(*summaries*) were prepared.)]*

3rd Circuit Model Criminal Jury Instructions, No. 4.11 (2015) (unmodified).

GOV'T'S REQUEST NO. 38

Defendant's Prior Bad Acts or Crimes (F.R.E. 404(b))

You have heard testimony that the defendant (*summarize the other act evidence*).

This evidence of other act(s) was admitted only for (a) limited purpose(s). You may consider this evidence only for the purpose of deciding whether the defendant (*describe the precise purpose or purposes for which the other act evidence was admitted: for example (Pick those of the following, or other reasons, that apply)*),

had the state of mind, knowledge, or intent necessary to commit the crime charged in the indictment;

or

had a motive or the opportunity to commit the acts charged in the indictment;

or

was preparing or planning to commit the acts charged in the indictment;

or

acted with a method of operation as evidenced by a unique pattern (describe);

or

did not commit the acts for which the defendant is on trial by accident or mistake.;

or

is the person who committed the crime charged in the indictment. You may consider this evidence to help you decide (describe how the evidence will be used to prove identity -- e.g., whether the evidence that the defendant committed the burglary in which the gun that is the subject of this trial was stolen makes it more likely that the defendant was the person who placed the gun in the trunk of the car).

Do not consider this evidence for any other purpose.

Of course, it is for you to determine whether you believe this evidence and, if you do believe it, whether you accept it for the purpose offered. You may give it such weight as you feel it deserves, but only for the limited purpose that I described to you.

The defendant is not on trial for committing these other acts. You may not consider the evidence of these other acts as a substitute for proof that the defendant committed the crime(s) charged. You may not consider this evidence as proof that the defendant has/have a bad character or any propensity to commit crimes. Specifically, you may not use this evidence to conclude that because the defendant may have committed the other act(s), he must also have committed the act(s) charged in the indictment.

Remember that the defendant is on trial here only for (*state the charges*), not for these other acts. Do not return a guilty verdict unless the government proves the crime(s) charged in the indictment beyond a reasonable doubt.

3rd Circuit Model Criminal Jury Instructions, No. 4.29 (2015) (modified as indicated).

GOV'T'S REQUEST NO. 39

Consciousness of Guilt (Flight, Concealment, Use of an Alias, etc

You have heard testimony that after the crimes were supposed to have been committed, (*name of defendant*) (*describe the conduct proven*) defendant Leaford George Cameron took additional steps to conceal his actions, including by making statements to an immigration judge in Chicago, in order to hinder or delay the investigation and prosecution of this case.

If you believe that defendant Cameron engaged in efforts to conceal his actions (*name of defendant*) (*describe the conduct proven*), then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that (*he*)(*she*) committed the crime charged. This conduct may indicate that (*he*)(*she*) thought (*he*)(*she*) was guilty of the crime charged and was trying to avoid punishment. On the other hand, sometimes an innocent person may (*describe the conduct proven*) for some other reason. Whether or not this evidence causes you to find that the defendant was conscious of (*his*)(*her*) guilt of the crime charged, and whether that indicates that (*he*)(*she*) committed the crime charged, is entirely up to you as the sole judges of the facts.

3rd Circuit Model Criminal Jury Instructions, No. 4.30 (2015) (modified as indicated).

GOV'T'S REQUEST NO. 40

Election of Foreperson; Unanimous Verdict; Do Not Consider Punishment; Duty to Deliberate; Communication with Court

That concludes my instructions explaining the law regarding the testimony and other evidence, and the offenses charged. Now let me explain some things about your deliberations in the jury room, and your possible verdicts.

First: The first thing that you should do in the jury room is choose someone to be your foreperson. This person will speak for the jury here in court. He or she will also preside over your discussions. However, the views and vote of the foreperson are entitled to no greater weight than those of any other juror.

Second: I want to remind you that your verdict, whether it is guilty or not guilty, must be unanimous. To find a defendant guilty of an offense, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves each element of that offense beyond a reasonable doubt. To find a defendant not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Third: If you decide that the government has proved a defendant guilty, then it will be my responsibility to decide what the appropriate punishment should be. You should never consider the possible punishment in reaching your verdict.

Fourth: As I have said before, your verdict must be based only on the evidence received in this case and the law I have given to you. You should not take anything I may have said or done during trial as indicating what I think of the evidence or what I think your verdict should be. What the verdict should be is the exclusive responsibility of the jury.

Fifth: Now that all the evidence is in, the arguments are completed, and once I have finished these instructions, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views,

and keep an open mind as you listen to what your fellow jurors have to say. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong. But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that--your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience. Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. You should all feel free to speak your minds.

[Remember, if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.]

Sixth: Once you start deliberating, do not talk, communicate with, or provide any information about this case by any means to the court officials, or to me, or to anyone else except each other. During your deliberations, you may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Instagram, Snapchat, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case.

Seventh: If you have any questions or messages, your foreperson should write them down on a piece of paper, sign them, and then give them to the court official who will give them to me. I will first talk to the lawyers about what you have asked, and I will respond as soon as I can. In the meantime, if possible, continue with your deliberations on some other subject.

[If you want to see any of the exhibits that were admitted in evidence, you may send me a message and, if I can legally do so, I will have those exhibits provided to you.]

One more thing about messages. Do not ever write down or tell anyone how you or anyone else voted. That should stay secret until you have finished your deliberations. If you have occasion to communicate with the court while you are deliberating, do not disclose the number of jurors who have voted to convict or acquit on any offense(s).

3rd Circuit Model Criminal Jury Instructions, No. 3.16 (2015) (unmodified).

GOV'T'S REQUEST NO. 41

Verdict Form

A verdict form has been prepared that you should use to record your verdicts.

Take this form with you to the jury room. When you have reached your unanimous verdict, the foreperson should write the verdict on the form, date and sign it, return it to the courtroom and give the form to my courtroom deputy to give to me. If you decide that the government has proved a defendant guilty of any or all of the offenses charged beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the government has not proved a defendant guilty of some or all of the offenses charged beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form.

3rd Circuit Model Criminal Jury Instructions, No. 3.17 (2015) (unmodified).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via ECF's electronic filing system upon:

Christopher G. Furlong, Esquire
22 East Third Street
Media, PA 19063
cgfurlaw@comcast.net
Counsel for Leaford George Cameron

/s/ James A. Petkun _____
JAMES A. PETKUN
Assistant United States Attorney

Date: January 19, 2018